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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SUSANA RIVAS,

12 Plaintiff,

13 vs.

14 NEW CENTURY MORTGAGE
CORPORATION, et al.,

15 Defendants.

CASE NO. 09cv737 WQH (BLM)

ORDER

16 HAYES, Judge:

17 The matter before the Court is Plaintiff's Motion for Leave to File Second Amended
18 Complaint. (Doc. # 20).

19 **BACKGROUND**

20 This action concerns Plaintiff's mortgage. On April 10, 2009, Plaintiff initiated this
21 action by filing her Complaint against Defendants New Century Mortgage Corporation, San
22 Diego County Real Estate Services, Countrywide Home Loans, and American Servicing
23 Company. (Doc. # 1). On August 7, 2009, Defendant Countrywide Home Loans filed a
24 motion to dismiss. (Doc. # 4). On September 4, 2009, Plaintiff filed her First Amended
25 Complaint ("FAC") as of right. (Doc. # 6). The FAC alleged nine causes of action: (1)
26 Violation of the Real Estate Settlement Procedures Act ("RESPA"), (2) Violation of the Truth
27 In Lending Act ("TILA"), (3) Violation of California Civil Code § 1632, (4) Violation of
28 California Business & Professions Code § 17200, (5) Negligent Misrepresentation, (6) Fraud,
(7) Rescission, (8) Quasi Contract, and (9) Determination of Validity of Lien. *Id.* at 1. On

1 September 24, 2009, Countrywide Home Loans filed a Motion to Dismiss the First Amended
2 Complaint. (Doc. # 9).

3 The Court granted the motion on January 20, 2010 and dismissed the FAC as to
4 Countrywide Home Loans. (Doc. # 18). The order allowed Plaintiff to file a motion for leave
5 to amend within thirty days of the date of the order. *Id.* at 8. On the same day, the Court also
6 issued an Order to Show Cause why the case should not be dismissed as to New Century
7 Mortgage Corporation, San Diego County Real Estate Services, and American Servicing
8 Company for failure to serve the complaint within the 120-day period allowed pursuant to
9 Federal Rule of Civil Procedure 4(m). (Doc. # 17). The Court ordered Plaintiff to respond on
10 or before February 15, 2010 with either:

11 (1) proof of service of the summons and the Complaint to Defendants New
12 Century Mortgage Corporation, San Diego County Real Estate Services, and
13 American Servicing Company; or (2) a declaration under penalty of perjury
14 showing good cause for failure to timely serve New Century Mortgage
Corporation, San Diego County Real Estate Services, and American Servicing
Company, accompanied by a motion for leave to serve process outside of the
120 day period.

15 *Id.* at 2. Plaintiff did not file a response. On February 18, 2010, the Court dismissed the action
16 as to New Century Mortgage Corporation, San Diego County Real Estate Services, and
17 American Servicing Company. (Doc. # 19).

18 On February 19, 2010, Plaintiff filed a Motion for Leave to File Second Amended
19 Complaint. (Doc. # 20). Plaintiff's proposed Second Amended Complaint ("SAC") is
20 attached to the motion. (Doc. # 20 at 6). On March 22, 2010, Countrywide Home Loans filed
21 an opposition to Plaintiff's motion which contends it should be denied because the proposed
22 SAC fails to cure the defects in the FAC and because the SAC fails to state a claim upon which
23 relief may be granted. (Doc. # 23).

24 ANALYSIS

25 Plaintiff's proposed SAC names all of the original Defendants named in the FAC,
26 including New Century Mortgage Corporation, San Diego County Real Estate Services, and
27 American Servicing Company. (Doc. # 20 at 6). In her motion, Plaintiff requests an amended
28 summons as to American Servicing Company on the grounds that "ASC was not added as a

1 Defendant until 120 days after the filing of the original complaint, and could not therefore be
2 served with the Complaint.” *Id.* at 3-4. Plaintiff does not, however, address the fact that the
3 Court also previously dismissed her claims against New Century Mortgage Corporation and
4 San Diego County Real Estate Service for failure to serve within the 120-day period allowed
5 pursuant to Federal Rule of Civil Procedure 4(m). *See* Doc. # 19.


6 Plaintiff’s request for an amended summons as to American Servicing Company is
7 denied. Plaintiff failed to comply with the Court’s Order to Show Cause issued on January 20,
8 2010. (Doc. # 17). Plaintiff’s FAC naming American Servicing Company as a defendant was
9 filed on September 4, 2009. (Doc. # 6). Plaintiff failed to serve her FAC on American
10 Servicing Company within 120 days of filing the FAC with the Court. Plaintiff has not offered
11 any evidence of good cause for failure to serve within the 120-day period allowed pursuant to
12 Federal Rule of Civil Procedure 4(m) as required by the Court’s Order to Show Cause. *See*
13 Doc. # 17 at 2.

14 Because the proposed SAC names three defendants who were not timely served and
15 have been dismissed from the case, the Court will not permit Plaintiff to file the proposed SAC
16 to add these same defendants back into the case.

17 CONCLUSION

18 Plaintiff’s Motion for Leave to File Second Amended Complaint (Doc. # 20) is
19 **DENIED.**

20 DATED: April 13, 2010

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22 **WILLIAM Q. HAYES**
23 United States District Judge
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